IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1539 OF 2004

The State of Maharashtra ..Appellant

V/s.

Mohammad Altaf Mohd.Ismail ..Respondent

Mr.V.A.Thorat, Advocate General alongwith
Mrs.U.V.Kejriwal Additional Public Prosecutor for
the Appellant/State.

Mr.Vijay Pradhan alongwith M.H.Solkar for Respondent

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 08.02.2005.

PC

. Heard the learned Advocate General for the appellant/State and the learned Counsel for the Respondent.

2. By the order dated 16.12.2004 the learned Judge presiding over Special Court constituted under Prevention of Terrorist Act 2002 (POTA 2002) granted interim bail pending Bail Application No.21 of 2004. Aggrieved thereby, the State has preferred this Criminal Appeal under Section 34 of the Prevention of Terrorist Act 2002 (POTA 2002).

3. Inter alia, the interim bail to the respondent was granted because the learned Special Judge held

that accused/respondent was entitled to claim parity alongwith accused no.1.

4. By our order passed separately while disposing of Criminal Appeal No.1538/2004 and Criminal Appeal No.1115/2004, we have set aside the order granting interim bail to the accused no.1. As a necessary consequence, we are of the view that interim bail granted to the accused/respondent cannot be sustained.

5. Bail Application No.21/2004 is pending before the Special court and the learned Counsel for the respondent expressed that the said Bail application may be heard and decided by the learned Special Judge after the prosecution examines the witnesses through whom confessionsl statements allegedly made by the co-accused are to be proved. The submission of the learned Counsel for respondent is reasonable.

6. Hence following order :-

O R D E R

(i) The order dated 16.12.2004 granting interim bail to the accused/respondent is set aside.

(ii) The prosecution is expected to examine expeditiously the witnesses through whom

confessional statements allegedly made by the co-accused are to be proved.

(iii) The Special court shall hear and dispose of Bail application No.21 of 2004 thereafter and pass an appropriate order granting or refusing bail to the accused.

(iv) All contentions of the parties are kept open to be agitated before the learned Special Court at the time of hearing of Bail Application.

(v) The accused/respondent shall be at liberty to make a fresh application or amend the existing Bail application as may be advised.

. Appeal is disposed of accordingly.

(R.M.LODHA,J)

(R.S.MOHITE,J)